

ORANGE COUNTY AGRICULTURAL COMMISSIONER
ENFORCEMENT WORK PLAN
January 2009 through December 2011

The Orange County Agricultural Commissioner (ORA CAC) Enforcement Work Plan has been developed using the Department of Pesticide Regulation (DPR) ENF 08-18, Pesticide Use Enforcement Program Planning and Evaluation Guidance. The Orange County work plan will be a three year plan from January 1, 2009 through December 31, 2011.

The ORA CAC Pesticide Use Enforcement (PUE) core enforcement program consists of the following components:

- Restricted materials permitting
- Compliance monitoring
- Enforcement responses

The annual staffing resources to accomplish the activities outlined in this work plan are anticipated to remain at the FY 2007-08 levels of approximately 14,500 hours per year for Calendar Year (CY) 2009, 2010 and 2011. The 14,500 hours includes supervision and support hours as described below. Approximately 12,000 hours will be devoted to all program activities reported on the Pesticide Regulatory Activities Monthly Report (PRAMR) and an additional 2,500 hours on the Structural Fumigation Enforcement Program (SFEP), which is funded by the structural fumigation industry and is not reported on the PRAMR.

The 14,500 total program hours is the equivalent of 8 full time staff working in the Orange County Pesticide PUE program includes a deputy commissioner whose PUE program duties are about 50% and a PUE supervisor whose PUE program duties are about 100%. Field staff during these three years is expected to consist of a combination of 4 full and 3 part time specialists and five district inspectors who have multiple program responsibilities including Exclusion and PUE within a geographic area of the county. The district inspectors devote 30% to 40% of their time (500 to 700 hours) to their PUE activities annually.

The following is a breakdown of the core enforcement program by component with the anticipated staffing hours including the structural fumigation enforcement program for each of CY 2009, 2010, and 2011.

Restricted Materials Permitting	-	500 hours
Compliance Monitoring	-	7,500 hours
Enforcement Response	-	500 hours
Structural Fumigation Enforcement Program (SFEP)	-	2,500 hours
Supervision / Management	-	500 hours

Office Support - 3,000 hours

Orange County does not have any additional “field” offices. Inspectors use their personal vehicles for transportation and have county cell phones for use to conduct their work. Computers are available at the office for the inspectors use to receive and respond to email and access to DPR enforcement web site and other information available on line.

A. RESTRICTED MATERIALS PERMITTING

Orange County’s restricted materials permitting program annual evaluation by DPR has consistently been found to meet DPR standards and Orange County work plan goals with no corrective actions needed. The Agricultural Commissioner’s self-evaluation of the restricted materials permitting component also found the program meets DPR’s requirements including proper application of the laws and regulations pertaining to restricted materials permitting.

Orange County is continually becoming more urbanized; the pesticide use enforcement program faces numerous issues in regulating pesticide use. One of the most critical issues is the use of fumigants for field fumigation for strawberries and peppers. All of the fumigated fields are near sensitive sites, such as residences, schools, parks, industrial area and locations that may become developed in a short period of time. This requires additional time and knowledge of the sites to issue restricted materials permit for this use. In many cases permit conditions go beyond state guidelines and are necessary to address specific situations to protect the public and the environment and reduce complaints and incidents that arise from pesticide use.

Our goal for the Restricted Materials Permitting Component is to increase compliance with the laws and regulations and reduce the risk of pesticide exposure to the public and the environment.

The following actions will be taken to attain our goal:

- 1) ORA CAC will follow the DPR Enforcement Program Standards Compendium Volume 3 – Restricted Materials and Permit Manual.
- 2) Encourage growers to educate the community through positive interaction year-round regarding farming practices and the safe use of pesticides.
- 3) Provide Outreach and Training for growers each year on any changes in requirements that may affect their farming operation.
- 4) Provide Outreach and Training to industry on the changes in regulations and provide information to the community regarding the safe use of pesticides.

- 5) Issue permits with the conditions necessary to adequately protect the public and environment.
- 6) Perform inspection at a level that will achieve the compliance necessary to reduce possible exposure and complaints by the public.
- 7) ORA PUE staff attended the training for DPR Pesticide Use Enforcement Program Standards Compendium Volume 4 - Inspection Procedures in FY 2008-2009.

Permit Evaluation

Orange County Permits (approximate)

Agricultural Annual	228
Agricultural Multi-year	95
Non-agricultural	14

Over 90% of the Restricted Materials Permits are agricultural use permits that are issued each year to the same permittee with similar pesticides for use on the same sites. Agricultural Inspectors generally have the same permittees assigned to them and inspect/work with them year-round so they are familiar with the permittee's operation, compliance history, and surrounding areas that may be impacted by pesticide use. Agricultural permits issued have a total of 738 sites to evaluate.

Each Agricultural Inspector's responsibilities for permittees assigned to them include:

- Review and issue Restricted materials Permit after considering alternatives and mitigation measures.
- Review and evaluate each Notice of Intent received.
- Prior to approving the application for a permit renewal, conduct a site inspection for a permit renewal. A site inspection for restricted pesticide use is required by our county.
- Pesticide mix and load and application inspections.
- Field worker safety inspections.
- Headquarters inspection.
- Field fumigant monitoring on sensitive sites with air testing equipment.

Annual Procedure for Permit Issuance

November

- 1) Current year permits are reviewed by the issuing inspector, including a discussion with the permittees regarding alternatives, to identify any mitigation measures and to make additional changes for the upcoming year.
- 2) County records are evaluated to determine past permittee and/or site related compliance issues that may need to be addressed during permit issuance.
- 3) Information packets are sent to current permittees with instructions on permit issuance, required documents necessary for renewing permit, and a scheduled day and time for permittee to apply for reissuance.
- 4) Clerical staff input permit changes into permit database.

December

- 1) Updated permits for the next year are printed and distributed to inspectors.
- 2) Inspectors visit sites to assess the need for additional mitigation measures or permit conditions.
- 3) Inspectors meet with the current permit holders who are applying for a new permit at CAC office.
- 4) Private Applicators Exam is given as necessary to permittees who are included in the regulatory certification requirement.
- 5) Informational packets are given to the permittee including changes for the coming year.
- 6) Based on the review and evaluation of the permit application, if appropriate, the permit is issued.

Multi-year Permit Issuance procedure:

Permittees eligible for an Orange County multi-year permit includes cities, golf courses, school districts and cemeteries that are placed on a schedule establishing a rotation cycle for 3 year renewal. The multiyear permits are processed the same as annual permits.

New Permit Issuance Procedure:

As requests for a permit are received, each request is evaluated, discussion with the permittees on alternatives, site is evaluated to identify any mitigation measures. If the request meets the Restricted Materials and Permitting (Volume III) of the Pesticide Use Enforcement Program Standards Compendium, the permit may be issued.

During the months of December and January about 70% of the following are processed each year. In addition to the 300 Restricted Materials Permits issued, Orange County has approximately:

- 101 Operator Identification numbers issued
- 196 Agricultural Pest Control Businesses registered annually
- 98 Maintenance Gardeners registered annually
- 602 Structural Operators registered annually
- 94 Agricultural Pest Control Advisors registered annually
- 30 Certified Private Applicators examinations given annually
- 24 Pest Control Aircraft pilot (sterile release program) registered annually
- 3000 Notice of Intent (NOI) reviewed during the year.

Site Monitoring Plan

Orange County's existing site monitoring plan has been successful for many years. High priority is given to all restricted materials and sites within sensitive areas. High priority is given to sites that have a history of problems or sites that received complaints. The highest priority for site monitoring is field fumigation sites.

Due to the potential hazards associated with the use of fumigants for agricultural soil fumigations in an agricultural and urban setting, the Agricultural Commissioner will dedicate the resources needed to assure that each field within a sensitive area will be monitored throughout the entire fumigation process. The monitoring will assure compliance with applicable laws, regulations, and permit conditions in an effort to protect workers, the public and the environment.

B. COMPLIANCE MONITORING INSPECTIONS AND INVESTIGATIONS

The annual evaluations of Orange County's compliance monitoring program element by DPR for both inspections and investigations have consistently been found to meet DPR standards and Orange County work plan goals with no corrective actions needed. The results of the self-evaluation of the current compliance monitoring component found the program meets DPR's requirements including proper application of the laws and regulations.

Investigation Work Plan

The Orange County Agricultural Commissioner's office considers investigations related to pesticide illness, injury and complaints as a high priority. Each year the number of illness, injury and complaints ORA CAC may receive will vary. During FY 07-08 ORA CAC staff investigated a total of 68 investigations; this total included DPR WH&S assigned and other complaints. Nine of these investigations met USEPA priority criteria. We have 7 inspectors that are trained to do investigations. The majority of the investigations we perform involve structural pest control activities and antimicrobials. We have seen an increase in the number of pesticide complaints from the public concerning neighbors and pest control businesses. Complaints concerning the use of fumigants in the agricultural fumigation of strawberry or pepper fields and structural fumigations are given the highest priority.

The investigations are among the highest priority activities we do. The investigations will be thorough and completed in a timely manner by doing the following:

- 1) Implement the Pesticide Illness Report notifications system according to the statewide agreement.
- 2) Provide training to inspectors/investigators to assure their knowledge of the proper techniques in investigation evidence gathering and writing investigation reports.
- 3) Continue to maintain the investigation log by entering DPR required data in the log as we receive complaints/illnesses and having it available to DPR for review as requested.
- 4) Continue our internal tracking system to remind the inspectors when the investigation is to be completed to help ensure timeliness in completion and submission of investigation reports to DPR.
 - a) ORA CAC will consult with the DPR EBL on high profile WH&S investigations and complaints.
 - b) ORA CAC will follow the DPR Compendium Volume 5 Investigation Procedures when conducting investigations and in writing the reports.
 - c) ORA CAC investigations are reviewed for completion and accuracy by the Program Supervisor in PUE and Deputy Agricultural Commissioner in PUE prior to being submitted to DPR.

Comprehensive Inspection Plan

We will continue to perform approximately 2100 total pesticide use inspections annually. This includes application, mix load, field worker safety, and headquarters inspections.

Priority of Inspections

The highest priority inspection/investigations in Orange County and our plan for accomplishing these activities are the following:

Field fumigations – Approximately 60 total sites, all are sensitive sites. Our goal is to perform inspections on all fumigations near sensitive sites. We work closely with growers throughout all phases of the fumigation of fields near schools, residences, and other sensitive sites, to minimize the possibility of an incident. Our plan is to work with the growers on alternative fumigants and consider all appropriate mitigation measures to reduce the risk at the sites and providing assistance in compliance with the laws, regulations, and permit conditions.

Structural fumigation – Approximately 12,000 Notices of Intent for structural fumigation are received each year in Orange County. Because of the potential problems associated with structural fumigations, toxicity, large numbers of structures fumigated in Orange County, and public concern, structural fumigation inspections are a high priority. Orange County has participated in the Structural Fumigation Enforcement Program (SFEP) for 12 years. This program, initiated through industry-sponsored legislation and funded by the structural industry, has improved compliance through increased inspection levels, enhanced communication with registrants and the Branch I industry, and improved cooperation between industry and the Agricultural Commissioner office. The goal is to continue the high level of inspection activity (monitoring approximately 10%) of the 12,000 structures fumigated in Orange County annually.

Structural Branches 2 & 3 and non-production agricultural pest control represent a large segment of the commercial pesticide use in Orange County. Although the majority of pesticides used are categorized as “warning” or “caution” materials, the widespread use and the potential for worker safety violations and complaints justifies allocating inspection resources to assure compliance and is a priority.

Gaining the compliance of pest control companies, including companies that are unlicensed and others with a history of noncompliance are a priority. This will be accomplished by increasing inspection levels and enforcement action fines as necessary.

To assure the highest priority inspections are being performed at the appropriate level of quality we have implemented the following procedures:

- Completed inspection forms are reviewed by the PUE Program Supervisor and must be thorough and legible.
- Pertinent information documented on the inspection form in the Remarks section when a noncompliance is found.

- PUE Program Supervisor closely tracks the program to ensure highest priority inspections and any necessary follow-up activities are being completed.
- Retain flexibility to shift resources if priorities change.

Program success will be measured by improved compliance within the areas of the focused inspections listed below.

The following list estimates the number of inspections to be performed by ORA CAC PUE staff for CY 2009, 2010, and 2011.

I. Completed Investigations (Human Effects, Environmental Effects, Property Loss/Damage, Other)	100%
II. Application Inspections (Non-Fumigation)	320
Property Operator (grower, government) – 100	
Pest Control Business (agricultural, including maintenance gardener) – 60	
Structural (application/mix load)	
Branch II – 140	
Branch III – 20	
III. Field Worker Safety Inspections	40
IV. Mix/Load Inspections	65
Property Operator (grower, government) – 40	
Pest Control Business (agricultural, including maintenance gardener) – 25	
V. Fumigation Monitoring Inspections	1413
Field – 48	
Aluminum Phosphide – 10	
Structural Branch 1 (PRAMR) Complete Inspections – 195	
Structural Branch 1 (SFEP) Complete Inspections – 160	
Structural Branch 1 (PRAMR & SFEP) Partial Inspections – 1000	
VI. Headquarters/Employee Safety Records Inspections	165
Property Operator (grower, government) – 50	
Pest Control Business (agricultural, including maintenance gardener) – 40	
Structural Pest Control Operator – 75	
VII. Permit Monitoring	approx. 135
Pre- site Evaluations (5%) – approx. 120	
Use Monitoring-Non Ag Permit Holders (100%) 15	
XIII. Pest Control Business Record Inspections	50
IX. Pest Control Dealer Record Inspections	5

X. Agricultural Pest Control Advisor Record Inspections

5

Total Compliance Monitoring Inspections

2,198

C. ENFORCEMENT RESPONSE

- 1) The Enforcement Branch Liaison (EBL) will be notified in a timely manner of all ACP/SCP hearings as soon as they are requested by the respondent
- 2) The EBL will be notified in a timely manner of any enforcement cases referred for either licensing action to agencies such as the Structural Board or referrals for city/district attorney prosecution, etc.

The Orange County enforcement response program element annual evaluations by DPR have consistently been found to meet DPR standards with no corrective actions needed. The results of the self-evaluation of the current enforcement response found the program meets DPR's requirements including proper application of the laws and regulations.

ORA CAC PRAMR data for the core program element of Enforcement Response for FY 2007-08 shows Orange County took a total of 199 enforcement and compliance actions. This total included 42 structural civil penalty actions, 4 agricultural civil penalty actions and 153 were compliance actions (Notice of Violations and Warning Letters).

Orange County has placed a high priority on our enforcement response plan using the Enforcement Response Regulations (ERR) to provide us with the tools to help choose the best enforcement option. Our goal is to gain compliance of violators with the laws, regulations, and conditions for the safe use of pesticides and to process the actions in a timely manner.

Orange County's current enforcement response plan has provided a sound basis for consistency and appropriateness in the actions taken. The enforcement response process is made-up of the following components.

- 1) When a noncompliance is found the program supervisor discusses the noncompliance with the field inspector to determine and review all necessary information.
- 2) ORA CAC will follow the Enforcement Response Regulations guidelines.
- 3) ORA CAC PUE Violation Review Committee, which consists of the Deputy Commissioner, Program Supervisor and County's PUE Advocate, reviews each case to consider the appropriate level of action to take.

- 4) A Notice of Violation or Letter of Warning is issued for virtually every noncompliance found to notify the respondent and document the noncompliance.
- 5) If an enforcement action is determined to be appropriate, a Notice of Proposed Action is developed and sent by certified mail to the respondent. Each Notice of Proposed Action is written by PUE Program Supervisor and reviewed by the PUE Deputy Agricultural Commissioner.
- 6) The compliance and civil penalty actions are tracked quarterly to ensure timeliness in issuance to the respondent and completion of each action.

To improve our enforcement response we will take the following actions:

Minimize the time between the discovery of a noncompliance and initiating the appropriate action taken by scheduling Violation Review Committee meetings once every month or as needed.

Enhance the existing ORA CAC civil penalty hearing process through appropriate in house staff training and by attending any future DPR training that covers this part of the program.

Success of the ORA CAC enforcement program will be measured through improved compliance, particularly by companies and employees that have had prior enforcement or compliance actions taken against them.